

STATE OF VERMONT  
VERMONT ENVIRONMENTAL COURT

Re: Jurisdictional Opinion #2-241 Land Use Permit  
#2W0551 and Amendments – Hamm Mine, Windham.  
Issued by the District Coordinator of District #2  
Environmental Commission

Docket # 271-11-06

STATEMENT OF QUESTIONS  
ON APPEAL

Comes now Luzenac America, Inc. and U.S. Talc Co., by their legal counsel George T. McNaughton, Esq. of George W. Lamb, PC and file, in accordance with Environmental Court Rule 5 (f), their Statement of Questions, which are as follows:

- 1) Whether the Jurisdictional Opinion #2-241 Land Use Permit #2W0551 and Amendments issued by the District Coordinator of District #2 Environmental Commission was correct in determining that the Commission continued to have jurisdiction? (See attached copy of Opinion #2-241.)
- 2) Whether a District Environmental Commission retains jurisdiction of a property once subject to a permit regarding the extraction of minerals once reclamation is complete and the permit has expired.
- 3) With regards to District Environmental Commission jurisdiction what constitutes reclamation for purposes of determining whether jurisdiction remains.
- 4) Whether and under what circumstances may a District Coordinator contradict prior Jurisdictional Opinions which determined that jurisdiction had ceased and render a jurisdictional opinion that jurisdiction has not ceased. (See attached Jurisdictional Opinions of Linda Matteson and Patrick Dakin.)
- 5) Whether the acts required for reclamation under the reclamation plan applying to Land Use Permit #2W0551 and Amendments were in fact completed.
- 6) Whether unforeseen results occurring after reclamation is complete and after a permit has expired can resurrect Act 250 jurisdiction where the unforeseen results are not due to any action of the former permit holder or current landowner.
- 7) Whether an adjoining party who has been served with copies of prior jurisdictional opinions indicating that reclamation is complete and fails to appeal said jurisdictional

opinions may later request the District Coordinator to issue a jurisdictional opinion which contradicts prior opinions issued on the subject.

8) Whether the determination of the District Coordinator as to whether a stable lake has resulted was correct.

9) Whether the following opinions, findings, or implications of the District Coordinator were correct:

- a) that the approved reclamation plan has not been completed
- b) that the environmental impacts directly attributable to the permitted quarry operation are continuing.
- c) that provisions pertaining to dewatering of the mine during the quarry's operative phase have relevance to reclamation.
- d) that an offer made prior to the issuance of the permit to revisit an issue pertaining to an activity that was to occur solely during the operative stage of the quarry to another landowner has any relevance to whether jurisdiction is ongoing as to another landowner's complaints about the post operative stage of the quarry having nothing to do with the original offer to the other party.
- e) that an alleged mistake as to the results of a reclamation plan not being known by the District Commission or the District Coordinator causes jurisdiction to continue beyond the completion of the reclamation activities and the expiration of the permit.
- d) that drainage issues arising due to abnormally high rainfall can cause a resurrection of jurisdiction which had otherwise lapped.
- e) that the quarry and the reclamation of the quarry involved any "serious threat to public safety."
- f) that re-watering of a former wetland by reason of the reclamation of a quarry and the cessation of de-watering activities can be considered ongoing development for purposes of Act 250 Jurisdiction.
- g) that drainage issues resulting from beaver activity after reclamation is complete can be considered "activity" under Act 250.
- h) that the existence or non-existence of statements asserting that reclamation has or has not been completed is determinative as to the existence of Act 250 jurisdiction.

10) Whether the District Coordinator for District #2 had sufficient facts and evidence in file to issue the jurisdictional opinions issued in the opinion.

11) Whether the District Coordinator correctly applies the principles set forth the Vermont Supreme Court case *In re Huntley*, 2004 VT 115 (Nov. 9, 2004).

12) Whether the District Coordinator correctly considered the issues and facts set forth in the *REQUEST FOR RECONSIDERATION FILED BY LUZENAC AMERICA, INC.* when the District Coordinator rejected said request. (See attached copy of the Request and the Rejection.)

13) Whether the District Coordinator was correct in not setting forth the factual findings for rejecting said Reconsideration Request.

14) Whether the District Coordinator was correct in not setting forth her conclusions of law when rejecting said Reconsideration Request.

15) Whether the findings of fact made by the District Coordinator in her Jurisdictional Opinion #2-241 were correct and whether the findings of fact made by implication by the District Coordinator in her reject of the Request for Reconsideration filed with regards to said Opinion #2-241 were correct.

Submitted at Springfield this 8<sup>th</sup> day of December, 2006.

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George T. McNaughton, Esq. of  
George W. Lamb, PC  
Attorneys for Luzenac America, Inc. and  
U.S. Talc.

CERTIFICATE OF SERVICE

I, George T. McNaughton, Esq., attorney for the Luzenac America, Inc. and U.S. Talc Company, Inc., do hereby certify that on December 8<sup>th</sup>, 2006, I mailed by First Class Mail postage prepaid, the attached and foregoing Statement of Questions to the following persons at the address stated:

James McCandless  
520 Nut Plains Road  
Guilford CT 06437

Bradley D. Myerson, Esq.  
Myerson Law Offices  
PO Box 915  
Manchester Center VT 05255-0914

Sean T. & Elizabeth M. Reese  
35 Timberline Drive  
Concord NH 03301-7919

Booile L. Sluka, Esq.  
Boylan Associates, P.C.  
PO Box 887  
Springfield VT 05156

Robert M. Fisher, Esq.  
Fisher & Fisher  
PO Box 621  
Brattleboro VT 05302-0621

Helen George, Chair  
Windham Selectboard  
118 Abbott Road  
Windham VT 05359

Richard D. Perra  
Weber, Perra & Munzing, P.C.  
86 Linden St.  
P.O. Box 558  
Brattleboro, VT 05302

Bonnie Chase, Chair  
Windham Town Planning Commission  
715 Chase Road

Windham VT 05359

Windham Regional Commission  
Attn: James Matteau  
139 Main Street, Suite 505  
Brattleboro VT 05301

John Hansen, General Counsel  
Natural Resources Board  
National Life Building, Drawer 20  
Montpelier VT 05620-3201

April Hensel, District 2 Coordinator  
District 2&3 Environmental Commission  
100 Mineral Street, Suite 305  
Springfield VT 05156

Vermont Environmental Court  
Jacalyn Stevens, Court Manager  
2418 Airport Road  
Barre VT 05641

Certified at Springfield this 8<sup>th</sup> day of  
December, 2006.

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George T. McNaughton